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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK, ET AL.,

Defendants.

CASE NO. BC422252

[Assigned to the Hon. John Shepard
Wiley, Judge, Dept. "50"]

OBJECTION TO, MOTION TO STRIKE,
AND RESPONSE TO DEFENDANT
CITY OF BURBANK AND ALLEGED
"DOE OFFICERS 11 AND 12"
OPPOSITION TO PLAINTIFF'S
MOTION FOR DISCOVERY OF PEACE
OFFICER PERSONNEL AND OTHER
RECORDS

Date: November 4, 2010

Time: 8:30 a.m.

Dept.: 50

Action Filed: 9/22/09

10/29

1 **PLEASE TAKE NOTICE** that plaintiff William Taylor (hereafter "plaintiff") hereby presents
2 the following objection to, motion to strike in its entirety, and response to defendant City of
3 Burbank and Alleged "Doe Officers 11 and 12"s' Opposition to Plaintiff's Motion for Discovery of
4 Peace Officer Personnel and Other Records.

5
6 **I. INTRODUCTION AND STATEMENT OF FACTS**

7 Defendant and alleged "Doe Officers 11 and 12"s' opposition should be dealt with for what
8 is actually is - an untimely and improper motion for reconsideration under C.C.P. Section 1008
9 of this Court's previous unequivocal order that plaintiff has demonstrated good cause for the
10 production of the records at issue. Under the guise of allegedly representing the interests of
11 unnamed (and plaintiff contends utterly fictitious) "Doe Officers 11 and 12", defendant has
12 reasserted the identical grounds and arguments contesting the plaintiff's showing of good cause
13 for the *in camera* inspection and production of documents that were previously expressly and
14 properly rejected by this Court.¹

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16 Defendant has attempted to take advantage of the Court of Appeal's simple requests that:
17 a) the officers whose records are the subject of this Pitchess motion be given notice of this
18 motion, and the opportunity to appear and be heard regarding the motion; and b) that the Court
19 conduct an *in camera* inspection of the requested records and determine which of the records are
20 relevant to this case. At this juncture, despite being given several months to do so, not a single
21 officer has come forward to oppose the instant Pitchess motion, other than fictitious (and plaintiff
22 contends imaginary) "Doe Officers 11 and 12", and defendant has failed once again to show any
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26 Plaintiff directs the Court to the opposition filed by the defendant on April 8, 2010 to
27 plaintiff's Pitchess motion, and to the "motion to strike" filed by on June 18, 2008 by
28 defendant in regard to plaintiff's reply in support of plaintiff's Pitchess motion, which contain
the identical contentions and arguments made by defendant and the purported "Doe
Officers 11 and 12" in the instant opposition.

**OBJECTION TO, MOTION TO STRIKE, AND RESPONSE TO OPPOSITION TO
PLAINTIFF'S MOTION FOR DISCOVERY OF PEACE OFFICER PERSONNEL RECORDS**

1 legitimate reason why this Court should not forthwith conduct an in camera inspection of the
2 requested records sought by the motion and order the production of the relevant records to
3 plaintiff.

4 **II. THE DEFENDANT'S MOTION SHOULD BE STRICKEN**

5 As set forth above, defendant's motion is an untimely and improper motion for
6 reconsideration. since there are no new facts or law that justify defendant filing this opposition at
7 this time. In order to attempt to avoid the restrictions of C.P. Section 1008, defendant purports
8 to file the opposition on behalf of two unnamed and anonymous "Doe Officers 11 and 12." There
9 is no authority that supports allowing any anonymous party to file any opposition to any Pitchess
10 or other motion, and defendant cites to no authority to support that an individual whose records
11 are allegedly being sought via Pitchess motion can oppose the Pitchess motion without revealing
12 his or her identity.
13

14 As this Court is well aware, defendant and its current and/or former employees Jette and
15 Rosoff have brought multiple ex parte applications and motions to seal the Pitchess motions
16 seeking the records of Jette and Rosoff, all of which applications and motions which have to date
17 been denied by the Court. Defendant, Jette, and Rosoff, despite being given months to do so,
18 have failed to cite any apposite authority supporting that Pitchess motions or any papers relating
19 thereto should be sealed, let alone that an officer should be allowed to file an opposition to a
20 Pitchess motion anonymously.
21

22 Because these purported "Doe officers 11 and 12" have chosen to appear anonymously,
23 it is impossible for this Court to determine whether they have any legitimate privacy rights in
24 regard to any of the information or documents sought by this motion. How can the Court possibly
25 engage in weighing the alleged privacy rights of these fictitious officers against the rights of the
26 plaintiff to obtain the information and documents necessary to establish the truth in this litigation,
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1 as the Court is required to do when ruling on a privacy objection, if the Court has not even been
2 advised of the identity of the alleged person whose alleged privacy right is at stake? How is the
3 plaintiff not unduly prejudiced by this intentional failure by the defendant and by purported "Doe
4 Officers 11 and 12" to identify these officers so that plaintiff can set forth why their specific privacy
5 rights are not impacted by the instant motion, and/or why their alleged privacy rights must yield
6 in regard to plaintiff's right to obtain the information and documents sought by the motion?
7

8 Plaintiff objects to the entirety of the opposition filed by the alleged "Doe Officers 11 & 12"
9 on the basis that there is no authority allowing any person to oppose a Pitchess or any other
10 motion anonymously, and that therefore the entire opposition is a pleading which was not drawn
11 in conformity with California law and should be stricken in its entirety pursuant to C.C.P. Sections
12 435 and 436.

13 C.C.P. Section 436(b) provides in pertinent part:

14 "The court may upon a motion made pursuant to Section 435, or at any time in its
15 discretion, and upon such terms it deems proper:

16 (b) Strike out all or any part of any pleading not drawn or filed in conformity with laws of
17 this state, the court rule, or any order of the court."

18 Here, the instant motion by "Doe Officers 11 and 12" is not "drawn or filed in conformity
19 with laws of this state, the court rule, or any order of the court", and should be stricken in its
20 entirety.

21 **II. PLAINTIFF DOES NOT HAVE THE DOCUMENTS SOUGHT BY THIS MOTION, AND**
22 **ANY CONTENTION TO THE CONTRARY IS ILLOGICAL AND UNSUPPORTED**

23 First, defendant again argues, as it expressly previously argued, that plaintiff "has the
24 records sought, and for which the statutorily-required good cause showing was made, in the
25 Pitchess motion." (Opp. 1: 15 - 16.) However, the good cause showing that was made was for
26 the production of the entire internal affairs files regarding the alleged use of excessive force in
27 regard to the Portos Bakery robbery investigation, and not simply the records which defendant
28

1 has unilaterally declared are the records regarding the investigation of plaintiff. Defendant has
2 produced a mere handful of documents that it contends supports its defense in this matter, while
3 admitting that voluminous additional records exist that are directly relevant to the allegations that
4 excessive force was utilized by BPD personnel, including BPD Lt. Omar Rodriguez, in regard to
5 the investigation of the Portos Bakery robbery. Plaintiff contends that no excessive force was
6 utilized in connection with the investigation of the Portos Bakery robbery, and that therefore it was
7 and continues to be impossible for plaintiff to have obstructed any investigation into such claims
8 of excessive force. Indeed, the defendant itself has admitted that it determined in its initial internal
9 affairs investigation (BPD IA 4-26-08-1) of the allegations of excessive force regarding the
10 investigation of the Portos Bakery robbery that the allegations were unsubstantiated. (Opp. 3: 28 -
11 4: 5.) Obviously, plaintiff is entitled to the production of the entire internal affairs investigation 4-
12 26-08-1 since that investigation supports plaintiff's contentions that no excessive force was
13 utilized, and that therefore it was and continues to be impossible for plaintiff to have participated
14 in any alleged "cover-up" of the use excessive force.
15

16
17 Defendant next contends that "significant new information about the purported misconduct
18 during the Portos Robbery Investigation was brought to the attention of the BPD (specifically, a
19 BPD officer who witnesses the use of force as a witness), and dozens of internal affairs
20 investigations (the "2009 IA Investigation") were commenced by an outside investigator, James
21 Gardiner, under Master Investigation No. IA 3-16-09." (Opp., 4: 6 - 10.) Once again, plaintiff is
22 obviously entitled to the production of all information and documents regarding this alleged
23 "significant new information about the purported² misconduct during the Portos Robbery
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27 The use of the term "purported" by defendant in its opposition is significant, since
28 even the defendant is unwilling to unequivocally state to this Court that any misconduct
occurred during the Portos Robbery investigation.

1 Investigation", since it is this information that is being relied upon by defendant to support its
2 spurious claims of misconduct against plaintiff.

3 Defendant next makes the illogical and nonsensical argument that plaintiff should not be
4 entitled to the production of records regarding the "dozens of investigations" into the allegations
5 of excessive force in regard to the Portos Robbery, on the basis that these investigations involved
6 allegations of:

7
8 a) excessive use of force by officers (Opp., 4: 18 - 19) other than Lt. Rodriguez, which
9 information is obviously relevant since if defendant determined that excessive force was used in
10 regard to the Portos Robbery, then the fact that other officers were alleged to have used
11 excessive force that was "covered up" is directly relevant to plaintiff's contentions that he was
12 treated in a disparate manner for his alleged involvement in the matter, and as evidence that
13 defendant's claim that plaintiff engaged in obstruction of the original internal affairs of Portos
14 Robbery investigation is simply a sham and a pretext for defendant retaliating against plaintiff for
15 engaging in protected whistleblowing and FEHA activities;

16
17 b) for other officers failing to report misconduct of other officers during the Portos Robbery
18 investigation or taking steps to deter other officers from reporting the misconduct (Opp., 4: 20 -
19 22), which information and documents again are expressly relevant to plaintiff's claims of
20 disparate treatment and pretext as set forth above; and

21 c) for being untruthful when questioned about what they observed during the Portos Robbery
22 Investigation (Opp., 4: 22), which information and documents again are expressly relevant to
23 plaintiff's claims of disparate treatment and pretext as set forth above.

24
25 Thus, defendant itself admits in its ill-conceived argument that the information and
26 documents which it admits have not been produced to plaintiff are directly relevant to the matters
27 directly at issue in this case, including, *inter alia*: 1) Was excessive force utilized in the
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1 investigation of the Portos Robbery; 2) Who, if anyone, used such alleged excessive force; and
2 3) Who, how, and in what specific manner was the investigation allegedly obstructed by BPD
3 officers "failing to report misconduct", failing to deter misconduct", or "being untruthful" during the
4 initial internal affairs investigation", and what discipline, if any was given to such officers? If other
5 officers engaged in misconduct more egregious than that alleged to have been committed by
6 plaintiff and were not terminated, or if defendant protected certain officers (including former Chief
7 Tim Stehr and others directly involved in the original internal affairs investigation), by failing to
8 charge such officers with misconduct or properly investigate them, then such information and
9 documents are expressly relevant to plaintiff's claims that he was subjected to retaliation for
10 engaging in protected activities, and that defendant's claim that plaintiff was terminated for
11 "obstructing" the initial internal affairs investigation will be revealed for what it truly is - a sham and
12 pretext for retaliation.
13

14
15 Thus, defendant, by its own admission, has not produced to plaintiff "dozens of
16 investigations" regarding other officers who were alleged to have engaged in "excessive force",
17 "failing to report misconduct", failing to deter misconduct", or "being untruthful" during the initial
18 internal affairs investigation", all of which information and documents are directly relevant to
19 plaintiff's contentions of retaliation in this matter.

20 **III. DEFENDANT'S CLAIM THAT BECAUSE IT FOLLOWED THROUGH ON ITS NOTICE**
21 **OF INTENT TO TERMINATE PLAINTIFF AND HAS NOW TERMINATED PLAINTIFF IS**
22 **A GROUND FOR DENYING THE INSTANT MOTION IS EQUALLY ILLOGICAL AND**
23 **UNSUPPORTED**

24 This Pitchess motion was granted on July 12, 2010. At the time of the hearing of the
25 Pitchess motion, plaintiff had presented uncontradicted evidence to this Court that on or about
26 January 21, 2010, plaintiff had been placed on involuntary leave by the BPD for specious and
27 unfounded allegations of misconduct in regard to his involvement with BPD Internal Affairs file
28 number 04-26-08-1, and that thereafter, on or about March 31, 2010, plaintiff was served by

1 defendant with a Notice of Intent to Terminate plaintiff for allegedly interfering with and obstructing
2 BPD Internal Affairs file number 04-26-08-1.

3 Defendant now makes the spurious claim that because plaintiff had not yet been
4 terminated by the defendant at the time of the filing of the previous Pitchess motion that plaintiff's
5 showing of "good cause" for the production of the requested records was inadequate. Simple
6 logic dictates otherwise. If the Court believed that there was good cause for the production of the
7 information and documents when plaintiff was merely being threatened with termination, then
8 quite obviously there is good cause for the production of the information and documents after
9 plaintiff has actually been terminated. As defense counsel is well aware, plaintiff has filed
10 amended charges with the DFEH and an amended governmental claim with the City of Burbank,
11 the administrative prerequisites for filing a amended complaint in this matter to add termination
12 to the ever growing list of adverse actions perpetrated upon plaintiff by defendant for engaging
13 in protected activities. Defense counsel is also well aware that counsel for plaintiff has requested
14 defense counsel to stipulate to plaintiff filing an amended complaint in this matter to add the
15 additional adverse action of termination, which defense counsel has apparently delayed
16 responding to in order that defendant could assert its current specious argument.

17
18 Defendant's current assertion is nothing more than a further delaying tactic intended to
19 further obstruct and delay discovery and the prosecution of this matter, and should be summarily
20 rejected by this Court.

21
22 **V. DEFENDANT'S CLAIM THAT THE INVESTIGATIONS OF OTHER OFFICERS**
23 **ALLEGEDLY INVOLVED IN MISCONDUCT REGARDING THE PORTOS ROBBERY**
24 **INVESTIGATION ARE IRRELEVANT IS UNFOUNDED**

25 As set forth above, the "dozens of investigations" of the Portos Robbery regarding other
26 officers who were alleged to have engaged in "excessive force", "failing to report misconduct",
27 failing to deter misconduct", or "being untruthful" during the initial internal affairs investigation",
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1 are all information and documents are directly relevant to plaintiff's contentions of retaliation in this
2 matter. Indeed, the Court already determined that such investigations were relevant, and
3 defendant's current opposition is simply an untimely and improper attempt to re-litigate this issue
4 which has already been ruled upon by this Court.

5 Further, defendant's attempt to distinguish these other investigations as "investigations of
6 criminal misconduct" rather than "internal affairs misconduct" is a distinction without a difference.
7 Indeed, the fact that BPD officers were criminally investigated for having engaged in "excessive
8 force", "failing to report misconduct", failing to deter misconduct", or "being untruthful" during the
9 initial internal affairs investigation", and the actions, if any taken against such officers by
10 defendant and others, is directly relevant to plaintiff's claims of disparate treatment and retaliation
11 for engaging in protected activities, since plaintiff has never been charged with or convicted of any
12 crime in connection with any matter, let alone the internal affairs investigation of the Portos
13 Robbery Investigation. If other officers were subject to criminal investigation, arrest, and/or
14 prosecution, and the BPD treated such officers more favorably than plaintiff, then obviously such
15 conduct would assist in plaintiff establishing his claims of retaliation. Further, if the BPD itself
16 failed to criminally charge or prefer charges against BPD officers who engaged in "excessive
17 force", "failing to report misconduct", or failing to deter misconduct", relating to the criminal
18 investigation regarding the Portos Bakery Investigation, then such evidence would assist plaintiff
19 in demonstrating that the adverse employment actions taken against him in regard to similar
20 matters were simply a sham and a pretext for retaliation.

21
22
23 **VI. DEFENDANT'S CLAIM THAT THERE ARE "OTHER MEANS TO OBTAIN THE**
24 **INFORMATION AT ISSUE" IS UNFOUNDED**

25 Defendant next contends that are "less intrusive means" to obtain the information at issue,
26 including "depositions" or "other avenues". Defendant fails to specify which depositions would
27 provide plaintiff with such information, and fails to set forth that it would allow any witnesses to
28

1 testify about the information and documents sought by this motion unless and until the Court
2 orders the production of such information and documents pursuant to this motion. As this Court
3 is well aware, defendant has gone to great lengths to oppose plaintiff from obtaining the
4 information and documents sought by this motion. For defendant to suggest that it will simply sit
5 silently by as the proverbial "potted plant" when plaintiff's counsel attempts to question Mr.
6 Gardiner or anyone else regarding these investigations is of course simply nonsensical.
7 Defendant can be expected to and will no doubt object pursuant to *Penal Code* 832.5, 832.7, and
8 *Evidence Code* Section 1040, et seq., and instruct any deponent not to answer any questions
9 regarding these matters and not to provide the information or documents sought by this motion
10 to plaintiff.
11

12 In regard to the other "avenues" available to plaintiff, defendant fails to specify what those
13 avenues might be. Absent "x-ray" vision or "psychic revelations", plaintiff has no way of obtaining
14 the requested information and documents from any source other than via the instant Pitchess
15 motion.
16

17 **VII. DEFENDANT'S "HODGE-PODGE" OF OTHER ARGUMENTS ARE UNFOUNDED**

18 Defendant also continues to make the same tired arguments that were previously rejected
19 by the Court, including that plaintiff was required to identify the officers whose records are the
20 subject of this motion. The Court of Appeal and this Court already rejected that argument by
21 ruling that the defendant, who knows the identities of the officers who were the subject of the
22 internal affairs investigations at issue, were required to give notice to such officers of this motion
23 as defendant was and is required to do.
24

25 Further, as this Court is well aware, when plaintiff's counsel did specifically identify Lt. Jay
26 Jette and Lt. Eric Rosoff and provided a detailed description of the records sought in subsequent
27 Pitchess motions, both defendant and counsel for Jette and Rosoff vehemently objected and filed
28

1 EXECUTED at Beverly Hills, California on October 29, 2010.

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3 _____
4 Selma I. Francia
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6 **SERVICE LIST**

7 **WILLIAM TAYLOR v. CITY OF BURBANK**
8 **LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252**
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